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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,691	07/10/2007	Barry Howard Lee	0055714-000007	3036

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EXAMINER
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SMITH, RICHARD A

ART UNIT	PAPER NUMBER
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2841

NOTIFICATION DATE	DELIVERY MODE
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11/18/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,691	<b>Applicant(s)</b> LEE ET AL.	
	<b>Examiner</b> R. Alexander Smith	<b>Art Unit</b> 2841	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☒ Claim(s) 7 and 9-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060901</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claims 12, 13 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The specification is objected to because of the following informalities: Page 2 line 19, "rescinding" should be --extending--.

### *Claim Objections*

3. Claims 3-15 are objected to because of the following informalities:

Claim 3: "the edge" in line 2 should start with --a-- to provide proper antecedent basis.

Claim 6:

(a) "the portions" in line 2 lacks antecedent basis.

(b) "apertures" in line 2 does not properly refer to its antecedent of the at least one aperture introduced in claim 1.

(c) Lines 2-3 are grammatically and idiomatically incorrect to the point of being confusing. Further, is "follow" in line 2 drawn to "the portions" or to "apertures"?

(d) Line 3, what is the significance of "on which the measuring end is spooled"?

(e) Line 3, "the measuring end" lacks antecedent basis.

Claim 8: "the discs" in line 2 lack antecedent basis.

Claim 9: It appears to the examiner that "are" in line 2 should be --is-- in order to be grammatically correct.

Claim 10: ", which thumbwheel can drive" in line 2 should be --, said thumbwheel driving-- or --which drives-- in order to be grammatically correct.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,160,500 to Evans et al.

Evans et al. discloses for claim 1, a tape measure having a case, in which is a spooled concave measuring blade, the blade being extendable from the case via an opening (as shown), the tape measure having a spring which acts to urge the blade back into its spooled configuration, and an end piece at the free end of the measuring blade, wherein the tape measure further comprises at least one aperture in the casing to allow direct access to the spooled blade (at sliding access door 17 when opened, see figure 13).

For claim 3, the at least one aperture is provided in the edge of the case (the bottom edge).

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,363,171 to Scandella.

Scandella discloses for claim 1, a tape measure having a case, in which is a spooled concave measuring blade, the blade being extendable from the case via an opening (as shown in figure 2), the tape measure having a spring which acts to urge the blade back into its spooled configuration, and an end piece at the free end of the measuring blade, wherein the tape measure further comprises at least one aperture in the casing to allow direct access to the spooled blade (at cover 108 when opened, see figure 1).

For claim 2, wherein there are at least two apertures in the casing (in figure 1 the two unmarked holes in case 101, which are adjacent to the upper opening for cover 108 and wherein the ends of the cylindrical rod shown on cover 108 are secured, can in a broad sense each be considered as an aperture to allow direct access to the spooled blade via opening of the cover 108).

For claim 3, the at least one aperture is provided in the edge of the case (as shown in figure 1).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,023,277 to Fizer in view of US 4,200,983 to West et al. and US 4,649,649 to Fain.

Fizer discloses for claim 1, a tape measure having a case, in which is a spooled measuring blade, the blade being extendable from the case via an opening (as shown), the tape measure having a spring which acts to urge the blade back into its spooled configuration, and an end piece at the free end of the measuring blade, wherein the tape measure further comprises at least one aperture in the casing to allow direct access to the spooled blade (in a broad sense the spool is accessible).

For claim 3, the at least one aperture is provided in the edge of the case (as shown).

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Fizer does not disclose the blade being concave in claim 1 and means for driving the at least one of the discs or the spool in a direction to extend the blade from the casing in claim 8.

West et al. discloses a concavo-convex blade (column 1 lines 7-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the blade, taught by Fizer, a concave blade, as taught by West et al., in order to provide a better stand-out distance for the blade.

Fain discloses a tape measure having a means for driving at least one of the discs or the spool (via blade contact) in an extending direction from the case in order to allow the user to change the length using a single hand (abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tape measure, taught by Fizer, to include a means for driving in order to change the length using a single hand, as taught by Fain.

9. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,053,447 to Omri in view of US 4,200,983 to West et al.

Omri discloses for claim 1, a tape measure having a case, in which is a spooled measuring blade, the blade being extendable from the case via an opening (as shown), the tape measure having a spring which acts to urge the blade back into its spooled configuration, and an



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end piece (69) at the free end of the measuring blade, wherein the tape measure further comprises at least one aperture (as shown) in the casing to allow direct access to the spooled blade (in a broad sense the spool is accessible).

For claim 2, at least two apertures in the casing (since the plates 15 and 13 are separated by a plurality of posts 25 at the outer edge as shown in figures 2-4, then in a broad sense each of the openings between the posts can be considered as a separate aperture).

For claim 3, the at least one aperture is provided in the edge of the case (as shown).

For claims 4 and 5, the at least one aperture curves which follows the circumference of the spooled blade,

For claim 6, wherein the portions of the casing (the portions being the edges of the plates and with inclusion of the posts) which have apertures in follow the circumference of the spool on which the measuring end is spooled.

Omri does not disclose:

For claim 1 the blade being concave.

For claims 4 and 5, the length of the at least one aperture is at least 3 cm and 5 cm respectively.

West et al. discloses a concavo-convex blade (column 1 lines 7-10) having a similar shaped hook. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the blade, taught by Omri, to have a concave blade and a concavo-

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convex hook, as suggested by West et al., in order to improve the standout properties for the blade.

With respect to the length of the apertures being at least 3 cm and 5 cm respectively: These limitations are only considered to be the "optimum" values of the length between the posts of the tape measure disclosed by Omri, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the thickness and length of the blade to be enclosed by said case. See In re Boesch, 205 USPQ 215 (CCPA 1980).

***Allowable Subject Matter***

10. Claim 7 would be allowable if rewritten to overcome the claim objections set forth for claim 3 in this Office Action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 9-15 would be allowable if rewritten to overcome the claim objections set forth for claims 8-10 in this Office Action and to include all of the limitations of the base claim and any intervening claims.

12. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

*Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related tape measures.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean A. Reichard can be reached on 571-272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R.A.Smith/

November 16, 2008

R. Alexander Smith  
Primary Examiner Art Unit 2841